IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16043 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANCHALBEN WD/O.DEVCHANDBHAI BHAGUBHAI & 1 - Petitioner(s)

Versus

SPL.SECRETARY (APPEALS) REVENUE DEPARTMENT & 7 - Respondent(s)

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Appearance :

MR KK TRIVEDI for Petitioner(s) : 1 - 2.
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 4.
MR DEVANG T SHAH for Respondent(s) : 5 - 8.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/02/2006

ORAL JUDGMENT

1.In the present petition, the petitioners have challenged the order dated 13th May 2005 passed by the Principal Secretary (Appeals) Revenue Department,

Government of Gujarat. The issues pertain to revenue entries of two parcels of land bearing survey No.85 of village Ved, Taluka Choryasi and survey No.208/3 of village Katargam, Taluka Choryasi. The petitioners herein claim to be the heirs of deceased Gandabhai @ Bhagwanbhai Mangabhai Patel who expired on 4.3.2000. Respondent Nos.5, 6 & 7 are also heirs of deceased Gandabhai. The application made by the petitioners for entering their names in the revenue record was allowed by the Mamlatdar and ALT and the appeal and revision application filed by the contesting respondents before the Deputy Collector and the Collector were rejected. However, the further revision application filed before the State Government succeeded and the Principal Secretary set aside the entries earlier made in favour of the petitioners.

2. It appears that the petitioners herein have filed a civil suit before the civil court whereas respondent Nos.5, 6 & 7 have filed proceedings for obtaining probate on the basis of alleged will made by the deceased. Be that as it may. The learned advocate Shri DT Shah appearing for respondent Nos.5 to 7 submitted that before finalising the entries in favour of the petitioners, notice as required under section

135-D of the Bombay Land Revenue Code was not served on the said respondents. Considering this aspect of the matter, it would be appropriate to remand the proceedings to the Mamlatdar for fresh consideration and disposal in accordance with law. The said respondents will not insist for fresh notice before the Mamlatdar. The parties will remain present before the Mamlatdar, Choryasi City on 23rd March,2006. Further date of hearing will be indicated by the Mamlatdar to the appearing parties.

3. For the above purpose, the impugned order passed by the Principal Secretary is set aside. All other orders in this regard passed by the Mamlatdar as upheld by the Deputy Collector and the Collector also stand quashed. I have expressed no opinion on the rival contentions. It will be open for the Mamlatdar to pass fresh order in accordance with law.

4. With the above directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

Direct service to the Mamlatdar is permitted.

(Akil Kureshi, J.)

(vjn)